IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WA.No. 656 of 2007

AGAINST THE JUDGEMENT IN WPC.18336/2006 Dated 18/12/2006
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APPELLANT/PETITIONER:

M/S.JOSEPH & SONS BUILDERS (P) LTD.,
KALPETTA, WAYANAD,
REPRESENTED BY
MANAGING DIRECTOR JOSEKUTTY.

BY ADV. SRI.GRASHIOUS KURIAKOSE
SRI.GEORGE MATHEWS

RESPONDENTS/RESPONDENTS:
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1. **TIRUR MUNICIPALITY,**
   REP. BY ITS SECRETARY,
   TIRUR, MALAPPURAM DISTRICT.

2. **ICICI KINFRA LTD.,**
   T.C.2/3598, PATTOM,
   THIRUVANANTHAPURAM - 4.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)
SMT. VANAJA MADHAVAN, SC, TIRUR MUNICIPALITY.
SRI.T.L.ANANTHASIVAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, CJ. & K.M. JOSEPH, J.

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WRIT APPEAL No.656 of 2007

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Dated this the 7th day of December, 2007.

JUDGMENT

H.L.DATTU, CJ,

The appellant before us calls in question the correctness or otherwise of the orders passed by the learned Single Judge in W.P.(C) 18336 of 2006 dated 18th December, 2006. The learned Single Judge, while rejecting the writ petition, has granted some minor reliefs to the appellant.

2. The facts in brief are, that the Tirur Municipality ('Municipality' for short) had issued a tender notification inviting eligible and qualified persons to participate in the tender process for the purpose of construction of a Stadium on BOT basis. Pursuant to the said notification, the petitioner/appellant had participated in the tender process. It had offered lowest bid amount. Therefore, the Municipality had accepted its bid, and thereafter had negotiations with the petitioner. After such negotiations, the Municipality has also obtained the necessary permission from the State Government to accept the bid amount offered by the petitioner and award the contract to the appellant company.

3. After all this, the Municipality had taken opinion from its learned counsel, who in turn had informed the Municipality that the appellant before us does not have the pre-requisite qualification to participate in the tender process and secondly has also advised the Municipality to cancel the project for the construction of the stadium on BOT basis. Pursuant to the opinion of the learned counsel, the Municipality has cancelled the acceptance of the tender of the petitioner. Aggrieved by these actions of the Municipality, the petitioner was before this court in the writ petition.

4. Learned Single Judge, after noticing all these aspects of the matter, has rejected the writ petition, solely on the ground, that merely because the Municipality has accepted the bid of the petitioner, it cannot create a vested right in the petitioner to request the Municipality to award the contract to it.

5. The opinion of the learned counsel for the Municipality dated 30.5.2006 is as under:

> "The council had sought legal opinion from its counsel Adv.T.N.Ananthasivan regarding the acceptability of the bid submitted by M/s.Joseph & Sons for the construction of Tirur Municipal Stadium on BOT basis under the auspices of ICICI Kinfra and he has given an opinion that since M/s. Joseph & Sons Buildings could not satisfy the tender conditions, it is not feasible to accept the tender. Therefore, M/s. Joseph & Sons Buildings is hereby informed that the Municipality has decided not to accept the tender submitted by M/s. Joseph & Sons Builders and for cancellation of the project for the construction of the stadium on BOT basis."

6. Sri. Grashious Kuriakose, learned counsel appearing for the appellant/petitioner would submit that since the Municipality having accepted its lowest bid, they are expected to execute an agreement with the petitioner and since that has not been done, according to the counsel, the action of the Municipality is arbitrary and is in violation of the principles of promissory estoppel.

7. Learned counsel appearing for the Municipality, Smt. Vanaja Madhavan, on instructions would inform us, that the Municipality has cancelled the project for the construction of the stadium on BOT basis, for which purpose the tenders were invited from the qualified persons.

8. In the present case, though the Municipality has accepted the lowest

tender offered by the petitioner, it did not execute any agreement with the petitioner. In the absence of such an agreement, the petitioner cannot contend before this court that he has got a vested right and that right requires to be protected by this court. Since the Municipality has cancelled the project itself, the question of directing the Municipality to offer that project to the petitioner also does not arise. In that view of the matter, we are not inclined to grant the reliefs sought by the appellant in this Writ Appeal. Accordingly, while confirming the order passed by the learned Single Judge, the writ appeal requires to be rejected and it is rejected.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

sb.